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**Dato' Sri Zulkifli bin Omar & Ors v Ahmad Skhri bin Ramli
and another appeal**

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO
B-01(NCVC)(W)-412-12 OF 2013
AZAHAR MOHAMED, AZIAH ALI AND HAMID SULTAN JJCA
14 JANUARY 2015

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*Tort — Trespass — Trespass against the person — Wrongful imprisonment
— Claim for damages — Plaintiff imprisoned on allegation of failure to pay fines
imposed by court — Plaintiff informing the prison authorities that fine was paid
— Whether prison authorities were wrong in continuing to imprison plaintiff
D — Warrant of committal issued by court — Whether plaintiff should have asked
the court to correct the warrant of arrest — Whether prison authorities were
justified in complying with the warrant of arrest — Prisons Act 1995 s 29*

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The respondent/plaintiff was found guilty, convicted and sentenced to a fine of
RM150,000 in default, six months imprisonment in respect of two charges
under s 41(2) of the Securities Industries Act 1983. He had to pay a fine of
RM300,000. He had paid RM220,000 and in consequence of not paying the
balance, a warrant of committal was issued against the plaintiff stipulating

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RM150,000 if not paid, in default of six months imprisonment. The plaintiff
could have objected and produced the receipts of payment on the day of arrest
and imprisonment and/or could have done so through his solicitors. The fact
that he had to serve imprisonment for not having paid the balance RM80,000
was not in dispute. The plaintiff's complaint was that he had orally informed

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the Kajang Prison and later the Bentong Prison where he was detained but the
prison authorities had ignored it. The plaintiff claimed that because of the
negligence of the prison authorities he was detained for an extra 74 days and
thus claimed compensation for wrongful imprisonment. The learned trial
judge ('judge') found as a fact that the plaintiff had orally informed the prison

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authorities and thus found the respondents/defendants liable. The defendants
appealed against that decision.

Held, allowing the appeal with costs:

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- (1) The warrant of committal was issued by the court and if it was erroneous
the plaintiff ought to have informed the court and corrected the same.
The prison authorities were purely acting on the warrant (see para 5).
- (2) The judge had failed to consider s 29 of Prisons Act 1995 (see para 10).

- (3) A warrant issued by the court has a force of law and need to be followed (see para 11). A
- (4) No man can take advantage of his negligence or wrong doing or omission, etc based on the legal maxim '*nullus commodum capere potest de injuria sua propri*'. The the plaintiff had already paid RM220,000 as early as 4 February 2008 and warrant of committal was only issued on 4 August 2009. Upon seeing the warrant he should have objected to the right channel with evidence but he did not do so. On the facts of the case, the judge ought not to have found in favour of the plaintiff (see para 19). B

[Bahasa Malaysia summary C

Responden/plaintif didapati bersalah, disabitkan dan dihukum denda sebanyak RM150,000 jika ingkar, enam bulan penjara berkaitan dua tuduhan di bawah s 41(2) Akta Perindustrian Sekuriti 1983. Dia dikenakan denda sebanyak RM300,000. Plaintiff membayar sebanyak RM220,000 dan akibat tidak membayar baki denda, waran komital dikeluarkan terhadap plaintiff menetapkan jika RM150,000 tidak dibayar, jika ingkar enam bulan penjara. Plaintiff boleh membantah dan mengemukakan resit-resit bayaran pada hari tangkapan dan penjara dan/atau boleh melakukannya melalui peguam-peguamnya. Fakta bahawa dia dipenjarakan kerana tidak membayar baki sebanyak RM80,000 tidak dipertikaikan. Aduan plaintiff adalah bahawa dia telah memberitahu kepada Penjara Kajang dan kemudiannya Penjara Bentong di mana dia ditahan tetapi pihak berkuasa penjara tidak memperdulikannya. Plaintiff mendakwa bahawa oleh kerana kecuaiannya pihak berkuasa penjara dia ditahan 74 hari lebih dan oleh itu menuntut pampasan untuk pemenjaraan salah. Hakim perbicaraan yang bijaksana ('hakim') mendapati sebagai fakta bahawa plaintiff hanya memberitahu pihak berkuasa penjara dan oleh itu responden-responden/defendan-defendan adalah bertanggungjawab. Defendan-defendan merayu terhadap keputusan. D

Diputuskan, membenarkan rayuan dengan kos: E

- (1) Waran komital dikeluarkan oleh mahkamah dan jika ia salah, plaintiff patut memberitahu mahkamah dan membetulkannya. Pihak berkuasa penjara bertindak semata-mata atas waran (lihat perenggan 5). F
- (2) Hakim telah gagal untuk mempertimbangkan s 29 Akta Penjara 1995 (lihat perenggan 10). G
- (3) Waran yang dikeluarkan oleh mahkamah mempunyai penguatkuasaan undang-undang dan perlu diikuti (lihat perenggan 11). H
- (4) Tiada orang yang boleh mengambil manfaat daripada kecuaiannya atau kesalahan atau ketinggalan, dan lain-lain berdasarkan maksim undang-undang '*nullus commodum capere potest de injuria sua propri*'. Plaintiff telah membayar RM220,000 seawal 4 Februari 2008 dan waran I

A komital hanya dikeluarkan pada 4 Ogos 2009. Selepas melihat waran dia sepatutnya membantah kepada pihak yang betul dengan keterangan tetapi dia tidak berbuat sedemikian. Atas fakta kes, hakim tidak patut memihak kepada plaintif (lihat perenggan 19).]

B Cases referred to

Damusa Sdn Bhd v MRCB Prasarana Sdn Bhd [2012] MLJU 795; [2012] 1 LNS 994, HC (refd)

Grimstern Corp (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd [1987] 1 MLJ 302; [1987] 1 CLJ 123, SC (refd)

C *Henderson v Preston* [1888] 21 QBD 362, CA (refd)

Ketua Polis Daerah Johor Bahru, Johor & Others v Ngui Tek Choi [2013] 4 MLJ 504, CA (refd)

McGarth v Chief Constable of the Royal Ulster Constabulary and another [2001] 4 All ER 334, HL (refd)

D *Mohd Khirudin bin Yaakub v Superintendent of Central Prison Kuching & others* [2014] 11 MLJ 451; [2013] 7 CLJ 654, HC (refd)

Nurasmira Maulat bt Abd Jaffar & Ors v Ketua Polis Negara & Ors [2015] 3 MLJ 105; [2014] 1 LNS 1263, CA (refd)

Olotu v Home Office Another [1997] 1 All ER 385, CA (refd)

E *Quinland v Governor of Swaleside Prison and others* [2003] 1 All ER 1173, CA (refd)

R v Governor of Brockhill Prison, ex parte Evans (No. 2) [2000] 4 All ER 15, HL (refd)

F Legislation referred to

Magistrates' Courts Act 1980 s 6

Prisons Act 1995 s 29

Securities Industries Act 1983 s 41(2)

G **Appeal from:** Originating Summon No MT6(1)–24–1241 of 2006 (High Court, Shah Alam)

Norliza bt Zulkifli (Hani Aziz binti Ismail @ Aziz with her) (Senior Federal Counsel) for the appellant.

H *Muhammad Rafique (Zainal bin Narudin with him) (Law Practice of Rafique) for the respondent.*

Hamid Sultan JCA:

I [1] The appellants'/defendants' appeal in respect of damages awarded for wrongful imprisonment of the respondent/plaintiff came up for hearing on 8 May 2014 and upon hearing we allowed the appeal. My learned brother Azahar bin Mohamed JCA and my learned sister Aziah binti Ali JCA have read the draft judgment and approved the same. This is our judgment.

[2] It must be noted that the cross-appeal was withdrawn with the consent of the parties on the date of hearing. A

PRELIMINARIES

[3] A common sense approach needs to be applied to understand the case in the right perspective. Evidence will show the plaintiff/respondent was himself negligent and did not show receipt of payment of fine for which he was imprisoned notwithstanding that he was represented by solicitors as well as his family members having visited him regularly in the prison. The elementary jurisprudence involved in the instant case relates to 'no man can take advantage of his wrong or mistake or negligence, etc'. B C

BRIEF FACTS

[4] The plaintiff was found guilty, convicted and sentenced to a fine of RM150,000 in default, six months imprisonment in respect of two charges under s 41(2) of the Securities Industries Act 1983. That is to say he must pay a fine of RM300,000. He had paid RM220,000 and in consequence of not paying the balance, a warrant of committal was issued against the plaintiff stipulating RM150,000 if not paid, in default of six months imprisonment. That is to say for one charge he has paid in full and the other charge he has paid partly but the warrant says RM150,000. The plaintiff could have objected and produced the receipts of payment on the day of arrest and imprisonment and/or could have done so through his solicitors. The fact that he has to serve imprisonment for not having paid the balance RM80,000 is not in dispute. D E F

[5] The plaintiff's complaint is that he has orally informed the Kajang Prison and later the Bentong Prison where he was detained but the prison authorities had ignored him. One needs to pause here — the warrant of committal was issued by the court and if it was erroneous he ought to have informed the court and corrected the same. The prison authorities were purely acting on the warrant. G

[6] The plaintiff says that because of the negligence of the prison authorities he was detained for extra 74 days and claims this portion of the days spent as wrongful imprisonment. H

[7] The learned trial judge indeed found as a fact that he had orally informed the prison authorities and found the defendants liable without explaining how that could have been under the law: I

- (a) when the order for warrant of committal was issued by the court and the prison authorities were just performing their duties in relation to the warrant and if release is to be ordered, it has to be done by the courts and

- A for the purpose of the release the role of the prison authority at the most could have been only 'a messenger' to inform the court.
- (b) the fact that it was the court who had ordered the release upon confirming that the payment was received pursuant to a letter dated by the plaintiffs solicitor dated 8 February 2010 which was received by the prison authorities on 17 February 2010 who had immediately brought it to the attention of the court.
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- (c) without explaining why the plaintiff and/or his solicitor could not have written the same letter and provide the information as early as 4 August 2009 when the warrant of committal was issued and how exemplary damages of RM100,000 could be awarded when the negligence or fault line was on the plaintiff as early as 4 August 2009 in not disclosing the evidence to the court at the earliest opportunity.
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- D [8] The appellant's memorandum of appeal reads as follows:
- (1) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memberikan gantirugi kuantum yang rendah kepada perayu iaitu hanya sebanyak RM322,000 sahaja.
- E (2) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila hanya membenarkan gantirugi am sebanyak RM3,000 sahaja untuk tempoh masa sehari penahanan yang salah.
- (3) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila menolak tuntutan perayu/plaintiff untuk gantirugi teruk dan pengembalian wang denda.
- F (4) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gagal mengambilkira dengan sewajarnya kuantum gantirugi am dengan hanya membenarkan RM3,000 sehari untuk penahanan salah perayu dan terkhilaf dalam merujuk kepada fakta kes perayu dan menggunakan kes *Badrul Zaman PS Md Zakariah v Supritendent, Preventive Detention Centre, Kamunting & Ors* [2011] 4 CLJ 873 sebagai panduan yang tepat berdasarkan fakta kes dan latar belakang perayu.
- G (5) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gantirugi am yang dibenarkan haruslah lebih dari RM3,000 untuk sehari yang terlebih.
- H (6) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila memutuskan bahawa gantirugi teladan hanya sebanyak RM 100,000 adalah memadai.
- I (7) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila hanya membenarkan RM 100,000 sahaja untuk gantirugi teladan.
- (8) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila menolak tuntutan pengembalian wang denda plaintiff sebanyak RM70,000 dengan memutuskan bahawa denda adalah satu hukuman

yang bukan boleh ditarik balik atau dibatalkan sedangkan perayu telah ditahan untuk satu tempoh masa yang seolah-olah perayu tidak membayar denda langsung.

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- (9) Yang Arif Hakim telah terkhilaf dari segi undang-undang dan fakta apabila gagal meneliti bahawa tuntutan pengembalian wang denda oleh plaintiff adalah sebanyak RM70,000 kerana plaintiff telah menjalani hukuman penjara yang lengkap selama empat bulan, malah lebih dari empat bulan.

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[9] We have read the appeal record and thank the counsel for the comprehensive submission. After much consideration to the submission of learned counsel for the plaintiff/respondent and the defendants/ appellants in this appeal, we take the view the appeal must be allowed. Our reasons, inter alia, are as follows:

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- (a) The judgment in our view did not pass the acid test of reasonableness. (See *Damusa Sdn Bhd v MRCB Prasarana Sdn Bhd* [2012] MLJU 795; [2012] 1 LNS 994);
- (b) A judgment narrating a story such as the instant case and without considering the legal jurisprudence involving the subject matter and coming to the conclusion in the High Court stage may not give weightage to the paper it is written on, notwithstanding such judgment on an appeal, the Court of Appeal may affirm a decision of the High Court as correct even though the grounds for the judgment may not be satisfactory in cases where the decision passes the acid test of reasonableness. This is so because of s 69 of Courts of Judicature Act 1964 which reads as follows:

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69(1) Appeals to the Court of Appeal shall be by way of rehearing, and in relation to such appeals the Court of Appeal shall have all the powers and duties, as to amendment or otherwise, of the High Court, together with full discretionary power to receive further evidence by oral examination in court, by affidavit, or by deposition taken before an examiner or commissioner.

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(2) The further evidence may be given without leave on interlocutory applications, or in any case as to matter which have occurred after the date of the decision from which the appeal is brought.

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(3) Upon appeals from a judgment, after trial or hearing of any cause or matter upon the merits, the further evidence, save as to matters subsequent as aforesaid, shall be admitted on special grounds only, and not without leave of the Court of Appeal.

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(4) The Court of Appeal may draw inferences of fact, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.

(5) The powers aforesaid may be exercised notwithstanding that the notice of

A appeal relates only to part of the decision, and the powers may also be exercised in favour of all or any of the respondents or parties although the respondents or parties have not appealed from or complained of the decision.

B [10] In the instant case, the learned trial judge had failed to consider s 29 of Prisons Act 1995 which reads as follows:

C 29 An Officer in Charge shall keep and detain a person duly committed to his custody by a court or competent authority according to the terms of the warrant or order by which the person has been committed or until the person is discharged by due course of law.

D [11] It is trite warrant issued by the court has a force of law and need to be followed. This point was well articulated in the case of *McGarth v Chief Constable of the Royal Ulster Constabulary and another* [2001] 4 All ER 334, where the court relying on the House of Lords decision of *Henderson v Preston* [1888] 21 QBD 362 observed:

E All that one has to do is to read the warrant. What is a governor of a goat who receives such a warrant to do except to obey it? It is perfectly valid and correct, and is authorised by the Act of Parliament, and is issued by persons who have jurisdiction to issue it. It appears to me that the governor by obeying that warrant has simply done his duty, and the warrant protects him and is an answer to the action.

And further down in the judgment it was stated:

F Warrants issued by a court of law required to be treated with the same respect as must be accorded to any order of the court. The general rule was stated by Romer LJ in *Hadkinson v Hadkinson* [1952] 2 All ER 567 at 569, [1952] p 285 at 288:

G It is the plain and unqualified obligation of every person against on in respect of, whom an order is made by a court of competent jurisdiction to obey it unless and until that order is discharged. The uncompromising nature of this obligation is shown by the fact that it extends even to cases where the person affected by an order believes it to be irregular or even void. Lord Cotterham, LC, said in *Chuck v Cremer* (1840) 1 Coop temp Cott 338 at 342-343, 47 ER 884 at 885): A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it ... It must be dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null irregular, and who might be affected by it, was plain. He would apply to the court that it might be discharged. As long as it existed it must not be disobeyed.

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[12] Quite recently the Court of Appeal in the case of *Ketua Polis Daerah Johor Bahru, Johor & Others v Ngui Tek Choi* [2013] 4 MLJ 504, relying on the case of *McGarth* in respect of remand order had this to say:

[47] That being the case, the said remand order dated 9 February 2010 made against the plaintiff remained a lawful order unless and until it is set aside by a High Court exercising its criminal appellate or revision power. A

[48] Until such time, it is really not the function of the learned JC in this case, in determining a civil claim for unlawful detention, to go behind the remand order and to question its legality or the manner in which it was obtained. B

[13] In *Olotu v Home Office Anor* [1997] 1 All ER 385 on a similar subject, the court observed: C

Once the custody time limit has been expired without extension, the Crown Court would have been obliged to order the release of the plaintiff, but such release would have been on bail and the Crown Court could have imposed terms with which the plaintiff would have been obliged to comply after the release. Once the custody limit had expired, the plaintiff was in my view unlawfully detained, and an order which would have led to her release could have been obtained either the Crown Court or from the Divisional Court, but it does not follow that in the absence of any such order the governor was guilty of falsely imprisoning the plaintiff and in my view he was neither entitled nor bound to release her. D

And the court also endorsed the argument that there was no duty on the detaining authority to rectify the warrant and it reads as follows: E

Mr Stephen Richards, for the Home Office, supported the decision of the deputy judge. He submitted that the duty of the governor was to obey the order of the court. Following the committal of the plaintiff under s 6 of the Magistrates' Courts Act 1980, the plaintiff was (as was clear from s 22(1)(b)(ii) of the 1985 Act and reg 5(2)(a) of the 1987 regulations) to be regarded as in the custody of the Crown Court. The governor's duty, under s 6(3)(a) of the 1980 Act and according to the direction given to him in the warrant, was to hold the plaintiff until she should be delivered to the Crown Court in due course of law. He was never at any material time called upon to deliver the plaintiff to the Crown Court in due course of the law, and could not lawfully take it upon himself to release the plaintiff. She, in any event, had no right to be released after 112 days; her right was to be released on bail by order of the court. Although alerted by the terms of the warrant to the date upon which the custody time limit was to expire, the governor had no independent role in making any application to the court, nor any authority to release the plaintiff without an order of the court. F
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[14] In *R v Governor of Brockhill Prison, ex parte Evans (No 2)* [2000] 4 All ER 15, the court observed: I

The critical importance of the warrant and what detention it actually commands and authorizes applies both ways as illustrated by the judgment in *Demer v Cook* [1903] 88 LT 629. Lord Alverstone CJ contrasted two situations. One was where the jailer receives a prisoner under a warrant which is correct in form in which case no action will lie against him if it should turn out that the warrant was improperly

- A issued or the court had no jurisdiction to issue it. The other was where the warrant had on its face expired or the jailer had received the prisoner without any warrant, in which case the action will lie; ...the warrant and nothing else is the protection to the gaoler, and he is not entitled to question or go behind it.
- B [15] In *Quinland v Governor of Swaleside Prison and others* [2003] 1 All ER 1173, the English Court of Appeal had this to say:
Similarly in the case of *Ex p Evans* [1998] 4 All ER 993 [1999] QB 1043, Judge Li said:
- C Even if the detention proved to be unlawful, provided an individual is in custody in obedience to an order of the court the governor is not liable to an action for false imprisonment. In effect, the order of the court provides the necessary justification.
- D [16] In *Mohd Khirudin bin Yaakub v Superintendant of Central Prison Kuching & others* [2014] 11 MLJ 451; [2013] 7 CLJ 654, the court had this to say:
It is clear from this line of authorities that the prison officers and hence the
- E defendants in this case have no obligation to go beyond what it stated on the warrant. They may have the moral duty to verify from the court should a doubt arise as to the correctness of the content of the warrant but they do not have the corresponding legal duty to verify if each and every warrant commitment is correct. Mr Mohd Taufik is again right when he said that to impose on them that legal obligation is too strenuous and burdensome; not to mention impractical. They
- F duty, I must add lies with the court officer who signs the court order or the warrant as in this case, to ensure that it is correct in its detail.
- G [17] In this case, the court has granted exemplary damages. Exemplary damages are granted only in extreme cases where authorities wrongfully and with knowledge breach their obligations under the law and the act is inimical to fundamental guarantees enshrined in the Federal Constitution. It is not ordered for negligent act or tortuous conduct per se. This area of jurisprudence has been explored in detail by the Court of Appeal in *Nurasmira Maulat bt Abd Jaffar & Ors v Ketua Polis Negara & Ors* [2015] 3 MLJ 105; [2014] 1 LNS
- H 1263 and the court held:
The House of Lords as early as 1964 in *Rookes v Barnard* [1964] AC 1129 has held that English courts have recognised the awarding of exemplary damages, that is, damages whose object was to punish or deter and which were distinct from aggravated damages (whereby the motives and conduct of the defendant
- I aggravating the injury to the plaintiff would be taken into account in assessing compensatory damages), and there were two categories in which an award of exemplary damages could serve as a useful purpose, viz, in the case of oppressive, arbitrary or unconstitutional action by the servants of the government, in the case where the defendant's conduct had been calculated by him to make a profit for

himself, which might well exceed the compensation payable to the plaintiff. (See *Sakshi Sharma w/o Rajesh Sharma and others v State of Himachal Pradesh and others* [2012] Indlaw HP 1474). The Indian courts have been cautious in granting exemplary damage in ordinary tort claims. In *Common Cause v Union of India* [1999] 6 SCC 667 it was stated:

In an action for tort where the plaintiff is found entitled to damages, the matter should not be stretched too far to punish the defendant by awarding exemplary damages except when their conduct, specially those of the government and its officers, is found to be oppressive, obnoxious and arbitrary and is, sometimes coupled with malice. If we were to apply the rule in *Rookes v Barnard* [1964] 1 All ER 367 invariably and unhesitatingly and were to award exemplary damages in every case involving government officers or government servants, the result would be appalling.

[18] Based on established principles this is not a fit and proper case even to consider exemplary damages.

[19] It is also well established that no man can take advantage of his negligence or wrong doing or omission, etc based on the legal maxim *nullus commodum capere potest de injuria sua proprii*. (See *Grimstern Corp (M) Sdn Bhd & Anor v Global Insurance Co Sdn Bhd* [1987] 1 MLJ 302; [1987] 1 CLJ 123). This maxim is made applicable in various instances and not only confined to contractual principles as the maxim relates to common sense. In the instant case, the evidence will show that the plaintiff had already paid RM220,000 as early as 4 February 2008 and warrant of committal was only issued on 4 August 2009. Upon seeing the warrant he should have objected to the right channel with evidence but he did not do so. On the facts of the case, the learned trial judge ought not to have found in favour of the plaintiff.

[20] For reasons stated above we are of the considered view that it is fit and proper case to allow the appeal with costs of RM5,000. The order of the High Court is set aside.

We hereby ordered so.

Appeal allowed with costs.

Reported by Kanesh Sundrum

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